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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,840	01/08/2001	Lars Bergholtz	027650-908	2930

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EXAMINER
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AUGHENBAUGH, WALTER

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/700,840	Applicant(s) BERGHOLTZ ET AL. <i>eb</i>	
	Examiner Walter B Aughenbaugh	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-16 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-3 and 5-16 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Acknowledgement of Applicant's Amendments***

1. No amendments were made in the Paper filed January 5, 2004 (Response D).

***WITHDRAWN OBJECTIONS***

2. The objection to claims 12 and 16 made of record in paragraph 10 of Paper 14 has been withdrawn since claims 12 and 16 have not been amended. The spelling of "volastonite" in claims 12 and 16 must be as Applicant intended it to be.

***REPEATED REJECTIONS***

3. All rejections made of record in paragraphs 8 through 13 of Paper 18 have been repeated.

***ANSWERS TO APPLICANT'S ARGUMENTS***

4. Applicant's arguments on pages 2-3 of Response D (Resp. D) regarding the 35 U.S.C. 112, first and second paragraph rejections of claims 1, 9 and 14 made of record in paragraphs 8 and 10 of Paper 18 have been fully considered but are not persuasive.

Applicant states that "th[e] combination of uniform distribution of light reflecting particles and random distribution of light absorbing particles within the same compound forming a single layer is disclosed within the specification at page 5, lines 25-29 and also in Figure 1" on page 6 of the Amendment filed August 26, 2003. The cited portion of the specification itself refers to "the Figure" thus inseparably linking that which is stated in that cited paragraph with that which is shown in "the Figure"; therefore, the terms "uniformly" and "randomly", which are used in the cited paragraph, must be read in view of "the Figure". Applicant states on page 2 of Resp. D that "Neither the claims nor applicants remarks state or suggest that the use of the terms uniformly or randomly is intended to convey anything other than the ordinary meaning of those

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terms” (see last sentence of the indented paragraph on page 2 of Resp. D). Applicant also provides a selected dictionary definition for both of the terms “uniform” and “random”.

Both the mineral filler particles and the carbon black particles are depicted in the Figure as having random distributions in accordance with the definition of the term “random” that Applicant has provided. Neither the mineral filler particles or the carbon black particles are depicted in the Figure as having a uniform distribution in accordance with the definition of the term “uniform” that Applicant has provided. Applicant’s remarks in regard to the term “uniform” do not identify the structure that Applicant intends to recite by use of the phrase “uniformly distributed”; the definition of “uniform” that Applicant has provided in and of itself states nothing about the structure that Applicant intends to recite: the definition “consistent in appearance; having an unvaried texture, color or design” does not recite structural limitations in regard to the distribution of the mineral filler particles. The appearance, texture, color or design of the mineral filler particles is irrelevant in regard to the nature of the distribution of the mineral filler particles. Applicant states that “the carbon black particles do not share the specific pattern of distribution of the mineral particles”, but the Figure does not indicate that the mineral particles are distributed in a specific pattern of distribution. Applicant states that the Figure shows that “the carbon black particles are not distributed within the interjacent layer in the same pattern or ratio as the mineral particles”, but no pattern of distribution of the mineral particles, including a uniform pattern, is apparent in the Figure. In paragraph 11 of Paper 18 (first six lines of page 6) it is stated that:

Blending carbon black and a light-reflecting mineral such as clay or mica in a plastic layer would result in a random distribution of carbon black particles in the plastic layer and a uniform distribution of light-reflecting mineral particles throughout the plastic layer; the terms uniform and random, when used to describe a distribution of particles in

plastic, are interchangeable terms that indicate that the particles are distributed throughout the plastic, as evidenced by Fig. 1 of applicant's specification.

Applicant has not specifically addressed this statement that indicates that Applicant has used the phrases "uniformly distributed" and "randomly distributed" as interchangeable terms. Provided the definition of "random" that Applicant has provided, Applicant has used both of the phrases "uniformly distributed" and "randomly distributed" to indicate that both the mineral filler particles and the carbon black particles are distributed in a random fashion, based on the distributions shown in the Figure.

On page 3 of Resp. D, Applicant states that the two different terms are used "to reflect that the two different types of particles are distributed throughout the interjacent layer but not in an identical pattern or in a manner having one to one correspondence of the particles", but neither of the particles are shown in the specification as being arranged in any sort of pattern, and the "one to one correspondence of the particles" seems to come out of nowhere. Is this "one to one correspondence of the particles" that Applicant cites supported in the specification?

The fundamental point here is that the structure that is shown in the Figure (N.B. the Figure is identified in the specification and in Applicant's arguments as defining uniform and random distributions) does not support Applicant's argument that one distribution is defined by a uniform pattern as the term uniform is commonly used. Neither does the structure that is shown in the Figure support Applicant's argument that one distribution is defined by a uniform pattern as the term pattern is commonly used.

5. Applicant's arguments on pages 3-6 of Resp. D regarding the 35 U.S.C. 102 rejection of claims 1, 2, 5-10 and 12-16 made of record in paragraph 11 of Paper 18 have been fully considered but are not persuasive. Contrary to Applicant's argument that "there is no teaching

within Akao of a packaging material satisfying all the limitations of the instant claims” on page 3 of Resp. D, the invention claimed in claims 1, 2, 5-10 and 12-16 falls within the scope of the teachings of Akao.

On page 4 of Resp. D, Applicant alleges that claim 1 “requires a unique relationship between carbon black and light reflecting mineral particles”; however, the claimed combination of carbon black and light reflecting mineral particles and the claimed amounts of the carbon black and light reflecting mineral particles is not unique because Akao teaches the claimed combination of carbon black and light reflecting mineral particles and claimed amounts of the carbon black and light reflecting mineral particles as repeatedly discussed in paragraph 14 of Paper 18. In the sentence bridging pages 4 and 5 of Resp. D, Applicant again argues that Akao does not meet each of the limitations of claims 1, 2, 5-10 and 12-16. Applicant argues that “the rejection culls the various limitations and characteristics from a general teaching that provides no disclosure or recognition of the synergistic effect achieved here”, but the teachings that the rejection in paragraph 11 of Paper 18 relies upon are specific. A “disclosure or recognition” of the alleged “synergistic effect achieved here” is not necessary because the composition that achieves the alleged “synergistic effect achieved here” is plainly taught by Akao. Applicant argues that the rejection of claim 9 “collect[s] disjointed statements within the reference and combin[es] them”, but the statements that are relied upon are not disjointed because combination of these statements results in the Applicant’s invention as claimed, and there is no teaching in Akao that these teachings are not intended to be used together, or cannot be used together; Akao teaches that which is stated as being taught by Akao in paragraph 11 of Paper 18. Applicant argues that “nothing within the cited portion of the text states that the resulting bag has a white

appearance”, but the teaching at col. 43, line 54- col. 44, line 5 that was cited in paragraph 11 of Paper 18 is a blatant teaching that the bag has a white appearance. Paragraph 11 of Paper 18 states how the limitations of claim 9 are taught by Akao, in response to the last nine lines of page 5 of Resp. D. Paragraph 11 of Paper 18 states how the limitations of claim 14 are taught by Akao, in response to Applicant’s unsupported argument on page 6 of Resp. D.

6. Applicant’s arguments on pages 6-7 of Resp. D regarding the 35 U.S.C. 103 rejection of claim 3 made of record in paragraph 12 of Paper 18 have been fully considered but are not persuasive. Applicant’s arguments rely entirely upon Applicant’s arguments in regard to the 35 U.S.C. 102 rejection of claims 1, 2, 5-10 and 12-16 made of record in paragraph 11 of Paper 18 that have been addressed above in this Office Action.

7. Applicant’s arguments on page 7 of Resp. D regarding the 35 U.S.C. 103 rejection of claim 11 made of record in paragraph 13 of Paper 18 have been fully considered but are not persuasive. Applicant alleges that the “high degree of light shielding achieved with such low levels of light absorbing material is unexpected”, but Applicant has not met the burden on Applicant to establish that these results are unexpected and significant in that the evidence relied upon does not establish “that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance” *Ex parte Gelles*, 22 USPQ2d 1318, 1319 (Bd. Pat. App. & Inter. 1992). Furthermore, the claimed invention has not been compared with the closest prior art which is commensurate in scope with the claims as required by MPEP 716.02(b).

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

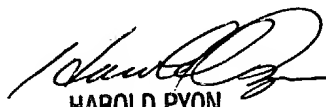
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 6:00pm and on alternate Fridays from 9:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh  
03/15/04

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1772

3/15/04